

in trust for the female complainant ; but this allegation is expressly denied in the answer of Mr. Cushing, and there is no evidence in support of the averment. The answer admits that there was a conversation between William J. Albert and the respondent, in the spring of 1846, in reference to a parcel of the stock of the Water Company, held by the bank as security for money loaned to the firm of Talbot Jones & Co., in which he, Albert, intimated that the stock was his, or that he had some interest in it, but the answer wholly denies that the conversation related to the stock now in controversy.

When this conversation was held, two dividends had accrued on this stock, those for January and April, 1846. They had accrued and been received by the Savings Bank, since its transfer to them in October, 1845, and it is difficult to believe that Mr. Albert, who had been accustomed to receive the dividends himself, did not know at that time, of the transfer of the stock to the bank : and yet he said nothing about it, though setting up a claim to another parcel of stock which had been placed with the bank by the same parties.

Samuel Jones, in his answer, says, that he transferred this stock to the Savings Bank in 1845, with the full knowledge and consent of said Albert, and the presumption is, I think, very strong that this is the case ; as, otherwise, it can scarcely be doubted, inquiries would have been instituted by him, and the stock traced to the bank ; and if Albert, the husband, knew it, and consented to it, it is certainly not pressing presumption to an unwarrantable extent to presume that Mrs. Albert also knew and consented to it.

It is not at all reasonable to suppose, that the loss of the income and dividends upon this stock would not have excited inquiry ; and inquiry of the officers of the city would have led directly to a knowledge of the party to whom the stock had been transferred. It may be, that if the complainants had (in the latter part of 1845 or in the spring of 1846, when, I think, they must have known of the transfer of this stock) adopted the proper steps, or given the necessary information to the city and bank, that no loss would have occurred.